



Exempt Action Final Regulation Agency Background Document

Agency name	Commonwealth Transportation Board (Virginia Department of Transportation)
Virginia Administrative Code (VAC) citation	24 VAC 30-271
Regulation title	Economic Development Access Fund Policy
Action title	Revision to Maximum Criterion for Unmatched Funds and Capital Outlay Requirement for Eligible Projects
Final agency action date	July 16, 2009
Document preparation date	August 19, 2009

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulation deals with the requirements established by the Commonwealth Transportation Board (CTB) in administering funding under the Economic Development Access Program, which is established in § 33.1-221 of the Code of Virginia. It was established by the General Assembly so that counties, cities and towns could assist new or expanding industries in obtaining access to their sites, without expending substantial portions of the localities' traditional highway funds. Since its inception, the program has been expanded to make a broader range of businesses eligible to compete for program funds while maintaining the primary goal of assisting localities in attracting businesses that provide significant amounts of private capital investment, employment opportunity and assurance of long-term presence in the Commonwealth.

Currently, the annual program funding is \$5.5 million, which includes funding for Economic Development Access, Airport Access, and Rail Industrial Access projects. Under the previous CTB policy, the locality was required to provide documentation of \$10 investment for every \$1 of the state allocation of funds that was spent or to be spent on the Access road project. With the revised policy, that actual investment

commitment is reduced to \$5 for every \$1 of the state allocation spent or to be spent. The following conditions also apply:

- Projects can be proposed for named businesses (traditional) or speculative in nature (bonded);
- Projects for known eligible businesses must have documented sufficient capital outlay to justify their allocations;
- Bonded projects require total or partial reimbursement by localities if the capital outlay is not documented in five years; and
- A locality may seek 50% reimbursement within two years after payback.

VDOT has identified a number of issues that have a bearing on the performance of the program. Over the past decade, approximately \$10 million in Economic Development Access funds have been returned due to a lack of sufficient investment, and over \$6 million in Economic Development Access Funds have been de-allocated at the request of the locality or the applicant. As a result, the current balance in the fund exceeds two years' amount of allocation. Additionally, other programs (such as the Governor's Opportunity Fund and the Department of Rail and Public Transportation's Rail Industrial Access Program) have been developed to address economic development. Although the Economic Development Access Fund has traditionally focused on capital investment, which has been considered to equal job creation, these programs have more specific requirements to measure effectiveness of funds allocated, such as performance criteria.

Non-substantive amendments were made for consistency or clarity. For example, references to VDOT were standardized. Substantive amendments to the regulation include the following:

- In § 10 G, the \$300,000 maximum unmatched allocation is increased to \$500,000 in the first and last sentences of the section. This change was a recommendation of the 2006 study of the program mandated by the 2005 Appropriations Act, and takes into account cost increases associated with economic development projects, as well as the need to reduce the strain on localities' financial investment on these projects.
- In § 10 G, the eligibility requirement for unmatched funds referenced in the third sentence is increased from 10% to 20% of the capital outlay of the designated eligible establishments. The limit on supplemental economic access development funds over and above the unmatched eligibility referenced in the fifth sentence is increased from 5% to 20%. These changes benefit localities because it lessens their risk for bonded projects. They have to provide less documentation of capital outlay commitments from private industry to support the allocation and its expenditure.

Chapter 85 of the 2009 Acts of Assembly directed state agencies to examine their regulations, and, where documents or payments related to the regulations could be submitted electronically, to consider amending the regulations to offer the option of electronic submission for these documents and payments. VDOT believes that the existing provision M in the regulation directing the Commissioner to establish administrative procedures to assure that provisions of the regulation and legislative directives are followed is sufficiently broad to cover the option of electronic submission. VDOT's *Economic Development Access Program Guide* can address the subject in greater detail.

The Office of the Attorney General, in a letter dated September 5, 2006, certified that the regulation was exempt from the requirements of the Administrative Process Act (APA) (§ 2.2-4000 et seq. of the Code of Virginia) pursuant § 2.2-4002 B. 3 and 4. The Office of the Attorney General confirmed these exemptions by correspondence dated August 17, 2009.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On July 16, 2009, the Commonwealth Transportation Board amended the *Economic Development Access Fund Policy* (24 VAC 30-271).

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

This regulation will not affect the institution of the family or family stability.